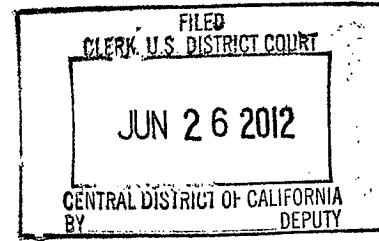


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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ALAN HERNANDEZ,  
individually, and on behalf of  
other members of the general  
public similarly situated,

Plaintiffs,

vs.

CHIPOTLE MEXICAN GRILL,  
INC., a Delaware corporation; and  
DOES 1 through 10, inclusive,

Defendants.

Case No:

CV12-05543 DSF(JLx)

CLASS ACTION COMPLAINT

- (1) Fraud
- (2) Breach of Express Warranty
- (3) Intentional Misrepresentation
- (4) Negligent Misrepresentation
- (5) Violation of California's False Advertising Act, California Bus. & Prof. Code Sections 17500, *et seq.*
- (6) Violation of California's Unfair Business Practices Act, California Bus. & Prof. Code Sections 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 **TO THE HONORABLE UNITED STATES DISTRICT COURT:**

2 Plaintiff ALAN HERNANDEZ ("Plaintiff"), brings this action against  
3 Defendants CHIPOTLE MEXICAN GRILL, INC. and DOES 1 through 10,  
4 inclusive, (collectively "Defendants") individually and on behalf of other members  
5 of the general public similarly situated, and alleges the following on information  
6 and belief:

7 **INTRODUCTION**

8 1. CHIPOTLE MEXICAN GRILL, INC. boasts that it serves "food with  
9 integrity," which includes serving meat from only "naturally raised" animals.  
10 Chipotle defines "naturally raised" as follows: "[n]aturally raised animals are  
11 raised in a humane way, fed a vegetarian diet, never given hormones, and [are]  
12 allowed to display their natural tendencies." Due to false and deceptive business  
13 practices and representations, CHIPOTLE MEXICAN GRILL, INC. has misled  
14 the general public into believing that all of the beef and chicken served in its  
15 restaurants come from "naturally raised animals," when in fact, CHIPOTLE  
16 MEXICAN GRILL, INC. also serves beef and chicken that comes from  
17 "conventionally raised" animals.

18 2. This case is brought on behalf of a national class of consumers who at  
19 any time during the period of four years preceding the filing of this Complaint to  
20 the present (the proposed "Class Period") have purchased and/or consumed meat  
21 (i.e. chicken and/or beef) from or at a CHIPOTLE MEXICAN GRILL, INC.  
22 restaurant. In Defendants' restaurants, Defendants shamelessly and broadly  
23 advertise that they serve meat exclusively from "naturally raised" animals as part  
24 of Defendants' mass in-store advertising campaign despite the fact that  
25 Defendants, on their website, in various Annual Reports, and in other publications,  
26 admit that CHIPOTLE MEXICAN GRILL, INC. restaurants are unable to  
27 exclusively or consistently serve meat from "naturally raised" animals.

28 3. Since Defendants began their "naturally raised" advertising campaign

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1 in CHIPOTLE MEXICAN GRILL, INC. restaurants and throughout the Class  
2 Period, Defendants have failed to reasonably, equitably, justly, or adequately  
3 inform consumers that the meat served in Defendants' restaurants comes partially  
4 or entirely from animals that were "conventionally raised." In Defendants' 2011  
5 Annual Report, Defendants define "naturally raised" meat as "...coming from  
6 animals that are never given antibiotics or added hormones and that are raised  
7 responsibly—that is, in accordance with our animal welfare standards." In  
8 contrast, meat from "conventionally raised" animals consists of meat from an  
9 animal not raised according to Defendants' own "naturally raised" standard.  
10 When meat comes from a "conventionally raised" animal, it means that the animal  
11 was treated with antibiotics, artificially supplied with hormones, and/or subjected  
12 to cruel treatment. In its CHIPOTLE MEXICAN GRILL, INC. restaurants  
13 nationwide, Defendants charge customers a premium price for chicken and beef by  
14 representing that the chicken and beef comes from animals that are free of  
15 antibiotics, hormones, and/or cruel treatment.

16 4. Due to false and deceptive business practices and representations,  
17 CHIPOTLE MEXICAN GRILL, INC. has misled the general public into believing  
18 that the meat offered at CHIPOTLE MEXICAN GRILL, INC. restaurants comes  
19 entirely from "naturally raised" animals. Defendants' mass in-store advertising  
20 campaign fails to disclose to customers that the meat served in Defendants'  
21 restaurants comes partially or entirely from "conventionally raised" chicken and/or  
22 beef. Further, Defendants' in-store advertising campaign fails to apprise the  
23 general public that Defendants' claims about serving meat exclusively from  
24 "naturally raised" animals is merely aspirational.

25 5. For example, in Defendants' 2011 Annual Report, Defendants admit  
26 "Some of our restaurants served conventionally raised chicken or steak for much of  
27 2011, a few markets reverted to conventionally raised beef in early 2012, and more  
28 of our restaurants may periodically serve conventionally raised meats in the future

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1 due to supply constraints.” See Exhibit 1. Furthermore, Defendants’ website  
2 states, “We are working diligently with all of our suppliers so we can return to  
3 serving 100% naturally raised chicken.” See Exhibit 3. Despite these admissions,  
4 Defendants continue to advertise in CHIPOTLE MEXICAN GRILL, INC.  
5 restaurants that the meat served comes entirely from “naturally raised” animals,  
6 thereby continuing to profit off of their false and deceptive marketing campaign.

7 6. In light of the misrepresentation inherent in Defendants’ “naturally  
8 raised” in-store advertising campaign, a reasonably prudent consumer would  
9 certainly not expect that some or all of the meat served by Defendants came from  
10 “conventionally raised” animals, nor would a reasonably prudent consumer expect  
11 that whether a specific batch of meat served by Defendants actually came from  
12 “naturally raised” animals depended on economic forces. As a result of  
13 disseminating this false, deceptive, and misleading advertising campaign during  
14 the proposed Class Period, Defendants were able to sell meat from “conventionally  
15 raised” animals to thousands of unsuspecting consumers throughout the United  
16 States and profited greatly from these transactions. Plaintiff alleges that  
17 Defendants’ conduct constitutes common law fraud, breach of express warranty,  
18 intentional misrepresentation, and negligent misrepresentation. In addition,  
19 Plaintiff alleges that Defendants’ conduct violates the unlawful, unfair, and  
20 fraudulent prongs of California’s Unfair Competition Law (Cal. Bus. & Prof. Code  
21 §§ 17200. *et seq.*), the California Business & Professions Code §17500, *et seq.*,  
22 and the Consumers Legal Remedies Act (Cal. Civ. Code §1750, *et seq.*).

23 7. Plaintiff seeks compensatory, restitution, declaratory and injunctive  
24 relief based upon Defendants’ conduct asserted in this Complaint. As of the date  
25 on this Complaint, Defendants’ restaurants in the United States contain  
26 advertisements and information that represent the meat served in Defendants’  
27 restaurants as coming entirely from “naturally raised” animals, even though  
28 Defendants elsewhere admit that Defendants regularly serve meat from

1 “conventionally raised” animals. Accordingly, Plaintiff seeks declaratory and  
 2 injunctive relief to ensure that Defendants remove any and all of the “naturally  
 3 raised” representations from Defendants’ restaurants, as long as Defendants  
 4 continue to serve meat from “conventionally raised” animals.

5 8. The chicken and beef served in CHIPOTLE MEXICAN GRILL, INC.  
 6 restaurants by Defendants will hereinafter be referred to as the “Subject Food  
 7 Product.”

### 8 JURISDICTION AND VENUE

9 9. This Court has jurisdiction over this action pursuant to 28 U.S.C.  
 10 §1332(a). Plaintiff and/or one or more members of the Putative Class are citizens  
 11 of a State different from Defendants. Further, the monetary damages and  
 12 restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the District  
 13 Court, and will be established according to proof at trial. The “amount in  
 14 controversy” for Plaintiff and the other class members, collectively, including  
 15 compensatory damages, restitution, attorneys’ fees, exceed the sum or value of  
 16 \$75,000, exclusive of interest and costs. Additionally, this Court has original  
 17 jurisdiction over this civil action pursuant to 28 U.S.C. § 1331 since one or more of  
 18 the claims alleged herein arises under the laws of the United States.

19 10. Venue is proper within this judicial district pursuant to 28 U.S.C.  
 20 §1391(a) and (b). Upon information and belief, a substantial part of the events or  
 21 omissions giving rise to the claims alleged herein relating to Plaintiff occurred in  
 22 this judicial district. Furthermore, upon information and belief, Defendants  
 23 maintain offices, have agents, and/or transact business in the State of California,  
 24 County of Los Angeles. Additionally, Plaintiff resides in the State of California,  
 25 County of Los Angeles.

26 11. Defendants are subject to personal jurisdiction and/or may be found in  
 27 this judicial district. Upon information and belief, Defendants are citizens of  
 28 California, have sufficient minimum contacts with California, and/or have

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1 otherwise intentionally availed themselves of the laws and markets within this  
 2 judicial district through the promotion, marketing, distribution, and sale of the  
 3 Subject Food Product in this judicial district so as to render the exercise of  
 4 jurisdiction over them by this court consistent with traditional notions of fair play  
 5 and substantial justice.

### 6 PARTIES

7 12. Plaintiff ALAN HERNANDEZ ("Plaintiff") is an individual residing  
 8 in the County of Los Angeles, State of California.

9 13. Defendant CHIPOTLE MEXICAN GRILL, INC. is a Delaware  
 10 corporation (hereinafter referred to as "CHIPOTLE"), and transacts business in the  
 11 County of Los Angeles, State of California.

12 14. The true names and capacities, whether corporate, associate,  
 13 individual or otherwise, of defendants DOES 1 through 10, inclusive, are unknown  
 14 to Plaintiff who sues said defendants by such fictitious names. Plaintiff is  
 15 informed and believes, and based on that information and belief alleges, that each  
 16 of the defendants herein designated as a DOE is legally responsible for the events  
 17 and happenings referred to in this Complaint, and unlawfully caused the damages  
 18 to Plaintiff and the Class members alleged in this Complaint. Plaintiff will seek  
 19 leave of court to amend this Complaint to show the true names and capacities when  
 20 the same has been ascertained.

21 15. At all times herein relevant, CHIPOTLE and DOES 1 through 10, and  
 22 each of them, were the agents, partners, joint venturers, representatives, servants,  
 23 employees, successors-in-interest, co-conspirators and assigns, each of the other,  
 24 and at all times relevant herein were acting within the course and scope of their  
 25 authority as such agents, partners, joint venturers, representatives, servants,  
 26 employees, successors, co-conspirators and assigns, and that all acts or omissions  
 27 alleged herein were duly committed with the ratification, knowledge, permission,  
 28 encouragement, authorization and consent of each defendant designated herein.

1 16. Defendants CHIPOTLE and DOES 1 through 10 will hereinafter be  
2 collectively referred to as "Defendants."

3 17. The policies and practices alleged in this Complaint were, upon  
4 information and belief, set or ratified at Defendants' highest corporate levels. At  
5 all relevant times herein, Defendants were in the business of developing,  
6 designing, licensing, manufacturing, distributing, selling, marketing, and/or  
7 introducing the Subject Food Product into interstate commerce throughout the  
8 United States, including in the State of California and every other state, either  
9 directly or indirectly through third parties, subsidiaries, or related entities.

10 **FACTS**

11 18. Plaintiff is informed and believes, and based thereon alleges, that at  
12 all relevant times mentioned in this Complaint, CHIPOTLE has owned and  
13 operated CHIPOTLE MEXICAN GRILL, INC. restaurants, a national fast food  
14 chain, with approximately 1,200 restaurants across the United States at present.  
15 CHIPOTLE currently owns and operates more than 100 CHIPOTLE MEXICAN  
16 GRILL, INC. restaurants in the State of California, including the County of Los  
17 Angeles.

18 19. Plaintiff is informed and believes, and based thereon alleges, that  
19 Defendants broadly advertise in CHIPOTLE MEXICAN GRILL, INC. restaurants  
20 through numerous menus, signs, packaging material, and other media that the  
21 Subject Food Product comes from "naturally raised" animals which Defendants  
22 define as "...animals that are never given antibiotics or added hormones and that  
23 are raised responsibly—that is, in accordance with our animal welfare standards."  
24 Defendants use the language "naturally raised" to shape the CHIPOTLE brand and  
25 to sell the Subject Food Product.

26 20. Plaintiff is informed and believes, and based thereon alleges, that  
27 Defendants admit that the Subject Food Product comes partially from  
28 "conventionally raised" animals. For example, Defendants' 2011 Annual Report

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1 states, "Continuing to serve naturally raised meats in all of our restaurants is one of  
2 our goals, but as discussed below, we have and will continue to face challenges in  
3 doing so. Some of our restaurants served conventionally raised chicken or steak  
4 for much of 2011, a few markets reverted to conventionally raised beef in early  
5 2012, and more of our restaurants may periodically serve conventionally raised  
6 meats in the future due to supply constraints." See Exhibit 1. Further, Defendants'  
7 2010 Annual Report states, "As of December 31, 2010, about 80% of our  
8 restaurants served naturally raised steak and about 86% of our restaurants served  
9 naturally raised chicken. As a result of ongoing supply challenges, we had to  
10 suspend serving naturally raised chicken in certain markets beginning in the second  
11 quarter of 2010." See Exhibit 2.

12 21. Plaintiff is informed and believes, and based thereon alleges, that  
13 despite the fact that Defendants admit that the Subject Food Product does not come  
14 entirely from "naturally raised" animals, Defendants fail to disclose in their in-  
15 store advertising campaign that the Subject Food Product comes partially or  
16 completely from animals that were not "naturally raised."

17 22. This misrepresentation is significant and material given the  
18 considerable difference in treatment experienced by animals that are "naturally  
19 raised" as opposed to "conventionally raised." By Defendants' own definition,  
20 "conventionally raised" animals are exposed to antibiotics, artificially supplied  
21 with hormones, and/or are subjected to cruel treatment while "naturally raised"  
22 animals are free from such suffering and artificial additives. The language  
23 "naturally raised" carries implications about the treatment of animals – treatment  
24 that consumers are often willing to pay a premium price for over comparable  
25 products that are from "conventionally raised" animals. Furthermore, the language  
26 "naturally raised" has the potential to influence and/or does influence consumers'  
27 decisions about whether to purchase and/or consume food made from animals.  
28



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23. Plaintiff is informed and believes, and based thereon alleges, that Defendants use the language “naturally raised” to describe the chicken and beef served in CHIPOTLE restaurants as part of a mass advertising campaign throughout Defendants’ restaurants. This advertising campaign is disseminated in formats that are highly visible and accessible to consumers, including but not limited to, large menu display boards, paper menus, order forms, receipt paper, and on some packaging material such as basket liner tissue. For example, the paper menus and large menu display boards posted in Defendants’ restaurants offer four different types of meat with a description of each type of meat underneath. *See Exhibit 4.* For “CHICKEN” and “STEAK” the description states: “Naturally raised, marinated in our chipotle adobo, then grilled.” For “BARBACOA,” the description states: “Naturally raised beef. Braised for hours, then shredded.” Moreover, some of Defendants’ passionate ramblings, which appear on its packaging materials given to customers, contain references to “naturally raised” animals.

24. In addition to Defendants’ mass in-store advertising campaign, Defendants recently aired a **national commercial depicting CHIPOTLE MEXICAN GRILL, INC. using “naturally raised” animals for meat.** The commercial, available on CHIPOTLE MEXICAN GRILL, INC.’s website, depicts a farmer as he turns his family farm into an industrial animal factory. *Realizing the error of his ways, the farmer tears down the buildings and pens formerly restraining the animals, and lets his cows, pigs, and chickens roam free on a vast farm. At the conclusion of the commercial, the farmer loads a Chipotle-branded truck with a crate, thus giving the viewer the unambiguous message that the meat Defendants sell comes from farms with “naturally raised” animals.*

25. Plaintiff is informed and believes, and based thereon alleges, that the language “naturally raised,” as used by Defendants’ mass in-store advertising

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1 campaign conveys material information to consumers about the Subject Food  
2 Product that consumers can and do use to make purchasing decisions.

3 26. At all times mentioned in this Complaint, Defendants, through their  
4 “naturally raised” in-store advertising campaign have suppressed and concealed  
5 and continue to suppress and conceal the fact that the Subject Food Product comes  
6 partially or entirely from “conventionally raised” animals. Defendants’ advertising  
7 campaign further fails to indicate that information about whether the Subject Food  
8 Product actually comes from “naturally raised” animals is available exclusively on  
9 the internet, including, for example, through Defendants’ website and Annual  
10 Reports.

11 27. Plaintiff is informed and believes, and based thereon alleges, that  
12 consumers must perform online research in order to learn that the Subject Food  
13 Product comes partially from “conventionally raised” animals and the claim that  
14 the Subject Food Product comes exclusively from “naturally raised” animals is  
15 merely aspirational. For example, during the proposed Class Period, Defendants’  
16 website stated, “We are working diligently with all of our suppliers so we can  
17 return to serving 100% naturally raised chicken.” Defendants’ website further  
18 stated, “...our ultimate goal is to have 100% of our chickens raised without the use  
19 of antibiotics. We also want to avoid any supplier that uses additional additives in  
20 their feed, like arsenic.” See Exhibit 3.

21 28. At all times herein relevant, Plaintiff purchased and ate Defendants’  
22 Subject Food Product at various locations in the State of California, County of Los  
23 Angeles.

24 29. At all times herein relevant, when Plaintiff purchased and consumed  
25 the Subject Food Product, Plaintiff was exposed to Defendants’ “naturally raised”  
26 in-store advertising campaign and reasonably believed that the Subject Food  
27 Product came exclusively from “naturally raised” animals since there were no  
28 representations made to the contrary.

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1           30. At all times herein relevant, Plaintiff relied upon Defendants'  
2 "naturally raised" in-store advertising campaign when purchasing and consuming  
3 the Subject Food Product, to his detriment.

4           31. Plaintiff is willing to and has paid a premium price for food that  
5 comes from animals not exposed to antibiotics, hormones, or cruel treatment.  
6 Further, Plaintiff has and continues to make decisions about what food products to  
7 purchase and consume based in part on whether the food products come from  
8 animals that were exposed to antibiotics, hormones, and/or cruel treatment.  
9 Plaintiff not only purchased the Subject Food Product because Defendants  
10 advertised that the Subject Food Product comes exclusively from "naturally raised"  
11 animals, but also, Plaintiff paid more money for the Subject Food Product than he  
12 would have paid for a similar product that came from "conventionally raised"  
13 animals.

14           32. Plaintiff is informed and believes, and based thereon alleges, that  
15 Defendants' concealment of the fact that the Subject Food Product came partially  
16 or entirely from animals that were exposed to antibiotics, hormones, and/or cruel  
17 treatment, and being explicitly informed that the Subject Food Product came  
18 exclusively from "naturally raised" animals, were the immediate cause of Plaintiff  
19 and the other Class members' decision to purchase and/or consume the Subject  
20 Food Product.

21           33. In light of Defendants' representations and omissions, as alleged  
22 herein, regarding the Subject Food Product, Plaintiff and members of the putative  
23 Class reasonably believed that the Subject Food Product came exclusively from  
24 "naturally raised" animals and did not come from "conventionally raised" animals.

25           34. Plaintiff is informed and believes, and based thereon alleges, as a  
26 result of Defendants' false and misleading representations, as alleged herein,  
27 Plaintiff has suffered damages including, but not limited to, monetary loss and  
28 emotional distress of the type that would naturally flow from being misled by

1 Defendants' "naturally raised" advertisement campaign into consuming the Subject  
 2 Food Product, which in fact came partially or entirely from animals that were  
 3 exposed to antibiotics, hormones, and/or cruel treatment.

#### 4 CLASS ALLEGATIONS

5 35. Plaintiff brings this action on his own behalf and on behalf of all other  
 6 members of the general public similarly situated, and, thus, seeks Class  
 7 certification under Rule 23 of the Federal Rules of Civil Procedure.

8 36. The proposed Class ("Class") is defined as follows:

9 All persons who were exposed to Defendants' in-store  
 10 "naturally raised" advertising campaign, and who purchased the  
 11 Subject Food Product at or from a CHIPOTLE restaurant  
 12 located in the United States at any time during the period of  
 13 four years preceding the filing of the instant Complaint to final  
 14 judgment.

15 37. Plaintiff reserves the right to establish sub-Classes as appropriate.

16 38. Plaintiff reserves the right to amend this Class definition prior to Class  
 17 certification.

18 39. The Class is ascertainable and there is a well-defined community of  
 19 interest in the litigation:

20 a. Numerosity: Upon information and belief, there are thousands  
 21 of Class members who are geographically dispersed throughout  
 22 the United States. Therefore, individual joinder of all Class  
 23 members is impracticable. The membership of the entire Class  
 24 is unknown to Plaintiff at this time.

25 b. Typicality: Plaintiff's claims are typical of all other Class  
 26 members as demonstrated herein because Plaintiff was a  
 27 consumer who was exposed to Defendants' in-store "naturally  
 28 raised" advertising campaign and purchased the Subject Food

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1 Product in the United States during the Class Period. Plaintiff,  
2 therefore, is not different in any relevant respect from any other  
3 Class member, and the relief sought is common to the Class.  
4 Plaintiff will fairly and adequately protect the interests of the  
5 other Class members with whom he has a well-defined  
6 community of interest.

7 c. Adequacy: Plaintiff will fairly and adequately protect the  
8 interests of each Class member, with whom he has a well-  
9 defined community of interest and typicality of claims, as  
10 demonstrated herein. Plaintiff has no interest that is  
11 antagonistic to the other Class members. Plaintiff's attorneys,  
12 the proposed Class counsel, are versed in the rules governing  
13 Class action discovery, certification, and settlement. Plaintiff  
14 has incurred, and during the pendency of this action will  
15 continue to incur, costs and attorneys' fees, that have been, are,  
16 and will be necessarily expended for the prosecution of this  
17 action for the substantial benefit of each Class member.

18 d. Superiority: A class action is superior to other available  
19 methods for the fair and efficient adjudication of this litigation  
20 because individual joinder of all Class members is impractical.  
21 Furthermore, the damages suffered by each individual Class  
22 member will likely be relatively small, especially given the  
23 relatively small cost of the Subject Food Product, as compared  
24 to the burden and expense of individual prosecution of these  
25 claims. Thus, it would be virtually impossible for the Class  
26 members to effectively redress the wrongs done to them  
27 individually. Even if the individual Class members could  
28 afford individual actions, it would still not be preferable to



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class-wide litigation because a class action presents far fewer management difficulties and inconsistent results, while providing the benefit of a single adjudication, economies of scale, and comprehensive supervision by single court.

- e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Businesses in this Nation violate consumer protection laws every day. Defendants have acted or refused to act on grounds generally applicable to the Class. Therefore, this action will allow for the vindication of consumers' rights with respect to the Subject Food Product.

40. There are common questions of law and fact as to the Class members that predominate over questions affecting only individual members. These common legal or factual questions include, but are not limited to:

- a. Whether Defendants advertise and represent that the Subject Food Product comes exclusively from "naturally raised" animals.
- b. Whether Defendants engaged in a pattern or practice of concealing, suppressing and/or misrepresenting in their mass in-store "naturally raised" advertising campaign the fact that the Subject Food Product comes partially from "conventionally raised" animals.
- c. Whether Defendants knew that their representations were false but continued to disseminate them.
- d. Whether Defendants' mass in-store "naturally raised" advertising campaign is false and misleading and reasonably likely to deceive Class members and/or the general public.

- e. Whether Defendants thereby engaged in consumer fraud, unfair competition, deceptive trade practices, or other unlawful acts.
- f. Whether Class members are entitled to damages including compensatory damages, punitive, restitution, disgorgement of profits, and injunctive relief, and the proper measure, nature and extent of such relief.

### **FIRST CAUSE OF ACTION**

#### **(Fraud)**

#### **(Against CHIPOTLE and DOES 1 through 10)**

41. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 40, and each and every part thereof with the same force and effect as though fully set forth herein.

42. During the Class Period, Defendants employed a mass advertising campaign in CHIPOTLE restaurants that misrepresented that the Subject Food Product came entirely from animals that were “naturally raised” when in fact the Subject Food Product came partially or entirely from animals that were “conventionally raised.” Thus, the “naturally raised” representation made by Defendants in their restaurants constitutes an affirmative act of concealment and non-disclosure.

43. The misrepresentation, nondisclosure, and/or concealment of material facts made by Defendants to Plaintiff and the other Class members, as set forth above, were known by Defendants to be false and material and were intended by Defendants to mislead Plaintiff and the other Class members. There was a substantial likelihood that a reasonable prospective purchaser of the Subject Food Product would have considered information about whether the Subject Food Product came from animals exposed to antibiotics, hormones, and/or cruel treatment important when deciding whether or not to purchase the Subject Food Product. Defendants carried out the scheme set forth in this Complaint willfully,

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wantonly, and with reckless disregard for the interests of Plaintiff and the other members of the Class.

44. Plaintiff and the other Class members were actually misled and deceived and were induced by Defendants to purchase the Subject Food Product.

45. Defendants had a duty to disclose that the Subject Food Product came partially or entirely from "conventionally raised" animals because this information was a material fact of which Defendant had exclusive knowledge; Defendant actively concealed this material fact; and Defendant made partial representations about the Subject Food Product but suppressed some material facts. Had Plaintiff and the other Class members known that the Subject Food Product came partially or entirely from animals that were not "naturally raised" they would not have purchased the Subject Food Product.

46. Defendants' misrepresentation and/or nondisclosure were the immediate cause of Plaintiff and the other Class members purchasing the Subject Food Product.

47. In the absence of Defendants' misrepresentation and/or nondisclosure, as described above, Plaintiff and the other Class members in all reasonable probability would not have purchased the Subject Food Product.

48. As a result of Defendants' conduct, Plaintiff and the other Class members have been damaged financially and have suffered other damages including, but not limited to, emotional distress.

## **SECOND CAUSE OF ACTION**

### **(Breach of Express Warranty)**

#### **(Against CHIPOTLE and DOES 1 through 10)**

49. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 48, and each and every part thereof with the same force and effect as though fully set forth herein.

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50. Defendants' "naturally raised" in-store advertising campaign, as described herein, constitutes an affirmation of fact or promise and/or constitutes a description of the Subject Food Product. These advertisements constitute an express warranty and were part of the basis of the bargain made between Plaintiff as well as the other members of the Class and Defendants.

51. Defendants breached this express warranty by selling chicken and/or beef that is not "naturally raised."

52. Plaintiff and the other Class members formed a contract with Defendants at the time Plaintiff and the other members of the Class purchased the Subject Food Product. The terms of that contract include the promises and affirmations of fact made by Defendants, as described herein. Defendants' mass advertising campaign in CHIPOTLE MEXICAN GRILL, INC. restaurants constitutes an express warranty, became part of the basis of the bargain, and is part of a standardized contract between Plaintiff as well as the other members of the Class and Defendants. Defendants breached the terms of this contract, including the express warranty, by not selling the Subject Food Product exclusively from animals that were "naturally raised."

53. As a direct and proximate result of Defendants' breach of their contracts and warranties, Plaintiff and the other members of the Class have been damaged in the amount of the purchase price of the Subject Food Product they purchased.

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**THIRD CAUSE OF ACTION**

**(Intentional Misrepresentation)**

**(Against CHIPOTLE and DOES 1 through 10)**

54. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 53, and each and every part thereof with the same force and effect as though fully set forth herein.

55. Defendants represented to Plaintiff and the other Class members that important facts were true. More specifically, Defendants represented to Plaintiff and the other Class members through a mass in-store advertising campaign that the the Subject Food Product came entirely from “naturally raised” animals.

56. Defendants’ representations were false.

57. Defendants knew that the representations were false when Defendants made them, and/or Defendants made the representations recklessly and without regard for their truth.

58. Defendants intended that Plaintiff and the other Class members rely on the representations.

59. Plaintiff and the other Class members reasonably relied on Defendants’ representations.

60. Plaintiff and the other Class members were financially harmed and suffered other damages including, but not limited to, emotional distress.

61. Plaintiff’s and the other Class members’ reliance on Defendants’ representations was the immediate cause of the financial loss and emotional distress sustained by Plaintiff and the other Class members.

62. Defendants’ misrepresentation and/or nondisclosure were the immediate cause of Plaintiff and the other Class members purchasing the Subject Food Product.

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63. In absence of Defendants' misrepresentation and/or nondisclosure, as described above, Plaintiff and the other Class members, in all reasonable probability, would not have purchased the Subject Food Product.

#### **FOURTH CAUSE OF ACTION**

##### **(Negligent Misrepresentation)**

##### **(Against CHIPOTLE and DOES 1 through 10)**

64. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 63, and each and every part thereof with the same force and effect as though fully set forth herein.

65. Defendants represented to Plaintiff and the other Class members that important facts were true.

66. Defendants' representations were not true.

67. Defendants had no reasonable grounds for believing the representations were true when Defendants made it.

68. Defendants intended that Plaintiff and the other Class members rely on the representations.

69. Plaintiff and the other Class members reasonably relied on Defendants' representations.

70. Plaintiff's and the other Class members' reliance on Defendants' representation was a substantial factor in causing the financial loss and emotional distress sustained by Plaintiff and the other Class members.

71. Defendants' negligent misrepresentation and/or nondisclosure was the immediate cause of Plaintiff and the other Class members purchasing the Subject Food Product from Defendants, and thereby sustaining monetary loss and emotional distress.

72. In the absence of Defendants' negligent misrepresentations and/or nondisclosure, as described above, Plaintiff and the other Class members, in all

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1 reasonable probability, would not have purchased the Subject Food Product from  
2 Defendants.

### 3 **FIFTH CAUSE OF ACTION**

4 **(Violation of the California False Advertising Act –**

5 **Business & Professions Code §§ 17500, *et seq.*)**

6 **(Against CHIPOTLE and DOES 1 through 10)**

7 73. Plaintiff incorporates by reference the allegations contained in  
8 paragraphs 1 through 72, and each and every part thereof with the same force and  
9 effect as though fully set forth herein.

10 74. Defendants engaged in unfair and deceptive acts and practices, in  
11 violation of California Business and Professions Code §§ 17500, *et seq.*, by  
12 marketing and/or selling the Subject Food Product without disclosure of the  
13 material fact that the Subject Food Product came partially or entirely from  
14 “conventionally raised” animals. Defendants disseminated a mass in-store  
15 advertising campaign concerning the Subject Food Product which is misleading  
16 and likely to deceive members of the California Class into believing that the  
17 Subject Food Product comes entirely from animals that are “naturally raised.”

18 75. These acts and practices, as described above, have deceived Plaintiff  
19 and other Class members, causing them to lose money and suffer emotional  
20 distress as herein alleged, and have deceived and are likely to deceive the  
21 consuming public, in violation of California Business and Professions Code §§  
22 17500, *et seq.* Accordingly, Defendants’ business acts and practices, as alleged  
23 herein, have caused injury to Plaintiff and the other Class members.

24 76. Defendants’ misrepresentation and/or nondisclosure of the fact that  
25 the Subject Food Product comes partially or entirely from animals that are not  
26 “naturally raised” were the immediate cause of Plaintiff and the other Class  
27 members purchasing the Subject Food Product.  
28

78. Plaintiff and the other Class members are entitled to relief, including full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits which may have been obtained by Defendants as a result of such business acts or practices, and enjoining Defendants to cease and desist from engaging in the practices described herein.

**(Against CHIPOTLE and DOES 1 through 10)**

80. California Business and Professions Code section 17200 prohibits any “unfair deceptive, untrue or misleading advertising.” For the reasons discussed above, Defendants have engaged in unfair, deceptive, untrue and misleading advertising in violation of California Business & Professions Code section 17200, *et seq.*

a. Representing that goods have a characteristic that they do not have (California Civil Code § 1770(a)(5));

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b. Representing that goods are of a particular standard, quality or grade when they are of another (California Civil Code § 1770(a)(7)); and

c. Advertising goods with the intent not to sell them as advertised (California Civil Code § 1770(a)(9)).

82. Defendants had a duty to disclose that the Subject Food Product came partially or entirely from “conventionally raised” animals because this information was a material fact of which Defendant had exclusive knowledge; Defendant actively concealed this material fact; and because Defendant made partial representations about the Subject Food Product but suppressed some material facts. Plaintiff and the other Class members would not have purchased the Subject Food Product had they known that the Subject Food Product came partially or entirely from animals that were exposed to antibiotics, hormones, and/or cruel treatment.

83. Plaintiffs and the other Class members reserve the right to allege other violations of law which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

84. California Business & Professions Code sections 17200, *et seq.* also prohibits any “unfair . . . business act or practice.” Defendants’ acts, omissions, misrepresentations, practices and non-disclosures as alleged herein also constitute “unfair” business acts and practices within the meaning of Business & Professions Code § 17200, *et seq.* in that Defendants’ conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct. Plaintiff asserts violations of the public policy of engaging in false and misleading advertising, unfair competition, and deceptive conduct towards consumers. There were reasonably available alternatives to further Defendants’ legitimate business interests, other than the conduct described

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herein. This conduct constitutes violations of the unfair prong of California Business & Professions Code sections 17200, *et seq.*

85. Business & Professions Code sections 17200, *et seq.* also prohibit any “fraudulent business act or practice.” Defendants’ claims, nondisclosures, and misleading statements, as set forth above, were false, misleading, and/or likely to deceive reasonable consumers within the meaning of Business & Professions Code sections 17200, *et seq.* Defendants’ business acts and practices are fraudulent because they are likely to, and in fact, did deceive reasonable consumers, including Plaintiff and the other Class members, into believing that the Subject Food Product comes entirely from animals that were “naturally raised.”

86. Defendants’ misrepresentations of the fact that the Subject Food Product comes entirely from “naturally raised” animals and/or Defendants’ non-disclosure that the Subject Food Product comes partially or entirely from animals that were “conventionally raised” were the immediate and proximate cause of Plaintiff and the other Class members purchasing the Subject Food Product.

87. As a result of Defendants’ misrepresentations and omissions, Plaintiffs and members of the putative Class lost money or property because had they known the Subject Food Product comes partially or entirely from animals that are not “naturally raised,” they would not have purchased the Subject Food Product from Defendants, but rather, they would have used their money to purchase another product.

88. Defendants’ conduct caused and continues to cause substantial injury to Plaintiff and the other Class members. Plaintiff and the other Class members have suffered injury in fact and have lost money as a result of Defendants’ wrongful conduct.

89. Pursuant to Business & Professions Code section 17203, Plaintiff and the other Class members seek an order requiring Defendants to immediately cease



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such acts of unlawful, unfair, and fraudulent business practices and requiring Defendants to engage in a corrective advertising campaign.

90. Unless Defendants are enjoined from continuing to engage in these unfair, unlawful and fraudulent business practices, Plaintiff and the other Class members will continue to be injured by Defendants' actions and conduct.

91. Defendants have thus engaged in unlawful, unfair, and fraudulent business acts and practices, entitling Plaintiff and the other Class members to judgment and equitable relief against Defendants, as set forth in the Prayer for Relief, including full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits which may have been obtained by Defendants as a result of such business acts or practices, and enjoining Defendants to cease and desist from engaging in the practices described herein.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all other members of the Nationwide Class, prays for relief and judgment against CHIPOTLE and DOES 1 through 10, and each of them, jointly and severally, as follows:

### **Class Certification**

1. That this action be certified as a Class action;
2. That Plaintiff be appointed as the Class representative;
3. That counsel for Plaintiff and the putative Class be appointed as Class counsel for the Nationwide Class;

### **As to the First through Sixth Causes of Action**

4. That Plaintiff and the other Class members be awarded compensatory and general damages according to proof;
5. That Plaintiffs and the other Class members be awarded disgorgement and restitution of all monies wrongfully obtained and retained by Defendants as well as any other equitable relief as the Court deems proper;

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6. That Plaintiffs and the other Class members be awarded interest on the monies wrongfully obtained from the date of collection through the date of entry of judgment in this action;

7. That Plaintiffs and the other Class members be awarded declaratory and injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein, to ensure compliance with the California False Advertising Act, the California Unfair Business Practices Act, the California Consumers Legal remedies Act, and other applicable laws and regulations as stated herein;

8. That Defendants be mandated to make a payment to a *cy pres* fund;

9. That Defendants be mandated to engage in a corrective advertising campaign to correct the misperceptions that Defendants' deceptive, false and misleading acts have created;

10. That Defendants be mandated to issue an apology to Plaintiff and the other Class members;


11. That Plaintiff and the other Class members be awarded punitive damages as to the appropriate cause of action;

12. That Plaintiff and the other Class members be awarded their reasonable attorneys', expert-witness fees, and other costs pursuant to statutes as may be applicable; and

13. All such other and further relief as the Court deems just and proper.

Dated: June 25, 2012

**LAWYERS for JUSTICE, PC**

By:   
Edwin Aiwanian  
Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

Plaintiff, ALAN HERNANDEZ, on behalf of himself and all other members of the general public similarly situated, hereby demands a jury trial.

Dated: June 25, 2012

**LAWYERS *for* JUSTICE, PC**

By:



Edwin Aiwanian

*Attorneys for Plaintiff*

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